

Supreme Court of the United States

No. —_____

THE CHESAPEAKE & OHIO RAILWAY COMPANY,
PETITIONER,

vs.

WESTINGHOUSE, CHURCH, KERR & CO., INC.,

and

No. —_____

WALKER D. HINES, LATE DIRECTOR GENERAL
OF RAILROADS, PETITIONER,

vs.

WESTINGHOUSE, CHURCH, KERR & CO., INC.

PETITION FOR WRITS OF CERTIORARI.

*To the Honorable, the Supreme Court of the United
States:*

Petitioners, The Chesapeake & Ohio Railway Com-
pany, a common carrier, engaged in interstate com-

merce, and Walker D. Hines, late Director General of Railroads of the United States Railroad Administration (Act of Congress of March 3, 1923,) respectfully represent that they are aggrieved by judgments of the Supreme Court of Appeals of Virginia, the highest Court of the State of Virginia in which a decision can be had, entered on the 12th day of June, 1924 (rehearing refused on the 24th day of June, 1924), in two certain actions at law wherein petitioners, severally, were plaintiffs and plaintiff in error, and Westinghouse, Church, Kerr & Co., Inc., a corporation, was defendant and defendant in error. The cases were heard together, involved the same facts and were disposed of in a single opinion.

These actions, instituted in the Circuit Court of the City of Richmond, Virginia, were for amounts due on account of services rendered respondent by an engine and crew under a contract. Federal control intervening, the contract enured to the benefit of the Director General of Railroads and this necessitated the bringing of two actions. The amounts admittedly due under the contract were \$7,533.50, to the Chesapeake & Ohio Railway Company, and \$5,765.43 to the Director General of Railroads.

The actions were defended upon two grounds:

1. The service performed by the rented engine and crew was a service which the petitioners were under obligation to render under the "line-haul" freight charge under tariffs duly filed with the Interstate Commerce Commission, and, therefore, the contract was without a lawful consideration; and,

2. The contract for the rental of the engine and crew violated the Interstate Commerce Act, and a similar law of the State, forbidding undue preferences or special contracts for an expedited service.

The Supreme Court of Appeals disposed of the case on the first ground, and held the contracts void because the engine and crew were used "in the performance of a transportation service in spotting these cars, for which service the Company has been fully paid in the line-haul rate."

QUESTION INVOLVED.

The question involved is:

Whether a contract by a carrier for the rental to a shipper of an engine and crew, which are thereupon put under his exclusive control, is void, because the engine and crew are used by the shipper, at his own convenience, in the performance of a transportation service included in the "line-haul" freight charge.

The Supreme Court of Appeals, answering this question in the affirmative, held:

"Here the service performed by the railway employes with the railway equipment was the precise service which the company was then under immediate obligation to perform with reasonable promptness under the circumstances and for which it had already been paid."

The rentals of equipment by carriers for their convenience in switching and "spotting" service are of frequent occurrence, and are recognized by the Interstate Commerce Commission (61 I. C. C. 214).

The view of the Supreme Court of Appeals is opposed to that of the Commission which holds:

"No legal obligation, however, rests upon the carrier to perform switching and spotting service *solely at a shipper's convenience.*" (61 I. C. C., 214. Italics ours.)

The opposite of this is what the Supreme Court of Appeals necessarily decides in holding the contract void, since the service of the engine and crew here were un-

der the exclusive control of the shipper and conformable to his convenience at all times during the pendency of the engagement.

Substantially all the shipments handled by the engine and crew were interstate (Rec., p. 57);* the reliance was specifically upon tariffs filed under the Federal law as furnishing the supposed defence. (Rec., pp. 98, 99.)

Under decisions of this court it seems that carriers are permitted to enter into special contracts for this kind of service. (*Chicago R. I. & P. Co. vs. Maucher*, 248 U. S. 359; See *Davis vs. Cornwell*, decided April 21, 1924.)

The question here is of importance to carriers and shippers and public interests are accordingly involved.

Petitioners, therefore, pray for writs of *certiorari* (*Schaff vs. Famichon Co.*, 258 U. S. 76), and that the case be reviewed and the judgments reversed.

Certified copies of the records are filed herewith.

Respectfully submitted,

THE CHESAPEAKE & OHIO RAILWAY COMPANY
and
WALKER D. HINES, Late Director General of Rail-
roads,

By *David H. Peake*...

Charles Peake...

Abraham Simon
Peake & Simon
Counsel for Petitioners.

*References are to pages of the printed record in the C. & O. Ry. case. The evidence in both cases is the same but the paging of the records is not.

NOTICE OF SUBMISSION OF PETITION FOR
WRITS OF *CERTIORARI*.

To Westinghouse, Church, Kerr & Co., Inc.:

You are hereby notified that the undersigned will, on the day of October, 1924, at 12 o'clock noon, or as soon thereafter as counsel can be heard, submit to the Supreme Court of the United States, at Washington, a petition for writs of *certiorari*, copy of which, together with brief in support thereof, is hereto attached, to review judgments of the Supreme Court of Appeals of Virginia, entered on the 12th day of June, 1924, rehearings of which were refused on June 24th, 1924, affirming, upon writs of error, judgments of the Circuit Court of the City of Richmond, entered on the 10th day of May, 1922, in actions at law, heard together, wherein the undersigned were plaintiffs and you were defendant.

Respectfully,

THE CHESAPEAKE & OHIO RAILWAY COMPANY
and
WALKER D. HINES, Late Director General of Rail-
roads,

By

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Counsel for Petitioners.

ACKNOWLEDGMENT OF SERVICE OF NOTICE.

We hereby acknowledge legal service upon us of the foregoing notice and the accompanying petition and brief.

Given under our hands this.....day of.....
1924.

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.....
Counsel for Westinghouse, Church, Kerr &
Co., Inc., Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

Petitioners instituted severally actions at law in the Circuit Court of the City of Richmond, Virginia, to recover for sums due under a contract for the rental or leasing of an engine and crew at Newport News, Virginia.

There was a plea of a general issue and the causes were heard together, the evidence in both cases being the same. There was no contest as to amounts due, and the case was heard and decided by the Court without a jury. The trial court gave judgments for the defendant, to which writs of error were awarded from the Supreme Court of Appeals. That Court, in an order entered on the 12th day of June, 1924, affirmed the judgments. A petition for a rehearing was entertained but a rehearing denied on the 24th day of June, 1924.

Writs of *certiorari* are here sought on the ground that the decision of the Supreme Court of Appeals is in conflict with decisions of the Interstate Commerce Commission, and involves an erroneous construction of federal tariffs. At best the question is open for decision in this honorable court (*Davis vs. Cornwell, supra*), and is a matter of general interest.

STATEMENT OF THE CASE.

The following were the facts found by the Supreme Court of Appeals:

“Ignoring the conflicts in the testimony which have been determined in favor of the defendant, the pertinent facts are these: Westinghouse, Church, Kerr & Co., Inc., hereinafter called the contractors, entered into a contract with the United States Government for the construction of embarkation facilities at Newport News during the World War. Large quantities of material for use in such construction had arrived over the lines of the Chesapeake & Ohio Railway Company at Newport News, and there was great congestion there in the railway yards, because of this and of other activities there growing out of the war. This congestion is described by all of the witnesses as very great indeed and the railway company was clearly failing to deliver freight to the consignees within a reasonable time. The shipments here involved were in carloads, and these delayed cars were standing upon the tracks in the congested yard along with a great many cars for other consignees, so that the building operations were greatly impeded by these unreasonable delays in the delivery of such cars.

When the correspondence upon which these actions are based occurred, that condition is thus described: The contractor ‘experienced more and more difficulty in obtaining the necessary service on the tracks; in other words, the C. & O. would have cars in their yard for a week or ten days or two weeks before they would deliver to us on our siding, principally through the lack of, as they put it, train crews or engine facilities or some other thing, so that we had very many conferences with Mr. Ford (superintendent of terminals at Newport News and later general superintendent at Newport News) with a view of eliminating this condition, and he finally stated to me that the only possibility of their being able to make these deliveries of material to us in

time to avoid delays in the construction work would be by assigning to us a locomotive. Meantime, we had had about a thousand cars received up to that time and a large part of the cars were buried in the storage tracks in the C. & O. yards, * * * .'

Under these conditions, after personal interviews, these letters passed:

'Newport News, Va.
September 28, 1917.

Chesapeake & Ohio Railroad Co.,
Newport News, Va.

Attention Mr. Ford, Supt. of Terminal.
1892-6.

Gentlemen:

Referring to our conversation with you to-day, we believe the switching problem is getting so heavy on account of the work at the various sites that it would be advisable for you to assign us an engine and crew on your usual basis, billing us for cost of operation as you may elect.

We would appreciate it if you would arrange for this engine and crew at the earliest possible moment, and also advise us if there is anything we can do towards helping out in furnishing a crew for this engine.

Yours very truly,

WESTINGHOUSE, CHURCH, KERR & COMPANY,

Alfred W. Bowie, Engineer in Charge.'

To which Mr. Ford replied September 29th, thus:

'Gentlemen:

Your letter of the 28th inst. under file 1892-6, with respect to providing an engine and crew to take care of your business at the various camp sites.

Beg to state that this engine will be assigned to your work, commencing Monday night and you will be billed for the use of the engine and crew, together with the cost of supplies, repairs, etc., plus ten per cent.'

Sidetracks for the delivery of carload shipments had been constructed from the main line of the railroad company into the camps which were being constructed. The contractor employed A. G. Quarles, a man of 28 years' railroad experience, who had been in the employment of the railway company, and for 17 years had acted as yard master at the Richmond yards; and put under him eight men, also their employees. At that time the conditions with the railway company at Newport News were such that apparently it was not only not able to deliver the cars, but was also unable to keep the records of the arrival and location of the cars for the various consignees. Under the direction of Quarles, these employees of the contractor were stationed in the yards and required to locate the cars consigned to the contractor, place tags or placards on them, indicating the siding upon which they were to be placed. The engine which, according to the claim of the railway company, was thus 'rented' to the contractor, and according to the claim of the contractor was thereby 'assigned' to it, was used to deliver for unloading these cars, estimated altogether during the period involved to be 6,500 in number, upon the switches or delivery tracks of the contractor—that is, it was used in railway vernacular, to 'spot' the cars. The immediate direction of the operation of this engine was by Quarles, the employee of the contractor, subject to the general direction and supervision of the yard master of the railway company in charge of the Newport News yard, and at night, when Quarles was off duty, the engine assigned to this work 'was operated under the immediate direction of the C. & O. yard master.'

The plaintiffs seek to recover rental for the use of the engine specially assigned to this work, and the bills are made up of a per diem charge, cost of materials used in the operation of the engine, the

wages of railway employees so engaged with an additional charge of ten per cent for supervision, claimed, except as to the supervision charge, to be in accordance with a circular of the railroad company covering such rentals of equipment. There was no tariff filed with the Interstate Commerce Commission or with the State Corporation Commission of Virginia, specifying such a rental, and the amounts which the plaintiffs seek to recover are independent of and in addition to rates for transportation service which are on file with each of the commissions.

The actions are defended on two grounds:

1. That the service performed by these engines was a service which the plaintiffs should have rendered under the aggregate line-haul charge paid on the freight, and that the supposed contract was without lawful consideration and void; and

2. That the contract violated the Interstate Commerce Act and the laws of the State of Virginia in such cases made and provided, and was, therefore, void and unenforceable.

To give proper consideration to these defenses, it is proper to consider the character of the service performed.

It is perfectly clear, under the tariffs on file, that the line-haul rates on these cars entitled the consignees to have them 'spotted' or placed upon these private delivery sidings to be unloaded. As expressed by the witness Ford, the consignee was entitled to one placement of the car 'on a track agreed upon by the railroad and the party owning the commodity, which would either have to be a general delivery, public delivery you might say, or a private industrial siding.' That this expresses the true construction of the applicable rate which was published and filed is conceded.

Ignoring the fact that an inconsequential num-

ber of these cars, not exceeding 25, were moved a second time because improperly spotted, (for which additional movement the railway company is entitled to a switching charge in accordance with the published tariff); these cars were placed on the delivery tracks of the contractor, and the obligation to do this without additional charge was clearly upon the railway company."

DECISION OF THE COURT.

The above being the facts found, the court held:

" * * * the service performed by the railway employees with the railway equipment was the precise service which the Company was then under immediate obligation to perform with reasonable promptness under the circumstances, and for which it had already been paid.

We do not think it necessary to consider any other feature of the case, for there is nothing which can vary or modify the result. There was no legal consideration for the promise relied on, and the trial court rightly determined that the railway company had no right to recover."

POINTS.

In the discussion of this case, your petitioners urge the following:

(1) No obligation rests upon a carrier, under the "line-haul" tariff rate, to furnish switching and "spotting" service solely at a shipper's convenience;

(2) The obligation to place or "spot" cars, under the line-haul tariff rate, does not contemplate the furnishing of special facilities to a shipper to meet abnormal and unprecedented conditions;

(3) The contract for the rental of the engine and crew did not constitute an undue preference or an illegal expedited service: on the contrary, the failure to exact compensation for this service has that effect.

ARGUMENT.

POINT I.

No obligation rests upon a carrier, under the line-haul tariff rate, to furnishing switching and spotting service solely at a shipper's convenience.

It is true that the great bulk of the work done by the engine and crew here was the switching and placing of cars, which the carrier was under obligations to do, under its tariffs, for no further consideration than the amount paid for the "line-haul" transportation of the carload. But the exclusive use of the engine and crew enabled the shippers to get other and better service than they could have had under existing conditions, since time and convenience are factors in the performance of all service. (Rec., pp. 33, 60, 61, 62, 74, 77, 84, 85, 97.)

So it has been held by the Interstate Commerce Commission, that "No legal obligation rests upon a carrier to perform switching and spotting service solely at a shipper's convenience." *Merchants Shipbuilding Corporation &c. vs. P. R. R. Co., et al.*, 61 I. C. C. 214. If the contract for the rent of the engine and crew here is to be held void for the reason suggested by the Supreme Court of Appeals, then the decisions of the Interstate Commerce Commission are necessarily erroneous.

Numerous cases have come before the Interstate Commerce Commission in which shippers have sought an allowance from carriers because the shippers have performed switching and "spotting" service, which the carrier was under obligation to perform under its tariff charges—but they have been uniformly disallowed, it being said to be well settled that the shipper is not entitled to an allowance from the carrier for a service which the

carrier is ready and willing to perform but which the shipper performs for his own convenience. 34 I. C. C. 609; 59 I. C. C. 29, 32; 61 I. C. C. 214.

This fixed principle seems to be conclusive of the question here, since if the argument advanced by the Supreme Court of Appeals in support of its conclusion here be sound, clearly the shipper would have been entitled to recover the rental of the engine and crew, had it been paid by him.

No distinction is perceived between services performed by a shipper with an owned engine and one that is rented.

POINT II.

The obligation to place or "spot" cars, under the "line-haul" tariff rate, does not contemplate the furnishing of special facilities to a shipper to meet abnormal and unprecedented conditions.

The Supreme Court of Appeals, in its decision, evidently overlooks the fact that while it is the duty of a carrier under its line-haul rate to once "spot" a car for a shipper, this duty is subject to the same duty which is owed to all other shippers at the same time and same place; and under the same conditions; and that consequently it is not the carrier's duty to furnish special facilities to spot cars for a special shipper. Such a shipper, so far as common-carrier duty is concerned, must bide his time along with all the other shippers, and wait for the placement of his cars in regular course. Moreover, since a common carrier is only under obligation to furnish facilities adequate for normal conditions, if abnormal and particularly if unprecedented conditions (such as undoubtedly prevailed in the present case) exist, the carrier is under no further duty than to use such facilities as it has at hand with such reasonable dispatch as these facilities will afford, and this,

too, with due regard to the equal rights of all the shippers respectively.

In *Pennsylvania R. Co. vs. Puritan Coal Co.*, 237 U. S. 121, 59 L. ed. 867, this court said:

“ . . . The carrier is not liable if its failure to furnish cars was the result of sudden and great demands which it had no reason to apprehend would be made, and which it could not reasonably have been expected to meet in full.”

See Note to *Illinois, &c., R. Co. vs. River, &c., Co.*, 44 L. R. A. (N. S.) 646-650.

At the time of the transaction in question, the United States was engaged in a world-wide war. The nations were at Armageddon. There was a congestion of cars, equipment, traffic, freight, etc., along the ports of the Atlantic seaboard such as had never been seen before; and the record is replete with evidence that this was particularly true of the port at Newport News. It was, therefore, not pretended in the present case that the carrier, under the pressure of such a sudden and stupendous emergency, was under obligations to have supplied cars, equipment and furnished employees and facilities sufficient to transport and deliver shipments with the same dispatch as would be expected in normal times. Consequently, more than ordinary delays in the delivery of shipments were to be expected, and, in the regular course of business, were absolutely unavoidable.

It was precisely for the reason that if the defendant had waited for the delivery of its cars in the regular course of business (so far as common-carrier obligations were concerned) it could not have got the shipments with the same speed and facility with which the defendant desired to get them, that the defendants decided to hire an

engine and crew to "drill out" and place the cars for themselves.

Thus, Quarles, the director of operations and witness for the defendant, testified (Rec., p. 79):

"After being out there several days and working with the C. & O. yard men in order to get the material over, I found that we were not getting anywhere, we were not getting the material, it was impossible for the service to be performed as necessary to the amount of men that we employed to unload that material and to work it up as it was unloaded, and I stated to our traffic manager, Mr. Smith, 'I don't see but one way out of this; that will be for the C. & O. to assign us a special engine for my use entirely to handle our freight.'"

And Bowie, another witness for the defendant, testified that the reason the defendant asked for the locomotive in question was that "*the yard was entirely swamped; it was trying to handle more traffic than capable of doing.*" (Rec., p. 59.)

Accordingly the Westinghouse, Church, Kerr & Co., entered into a contract to rent the engine and hire the crew from The Chesapeake and Ohio Railway Company and the Director General of Railroads. It is undisputed that the contract was carried out. It is undisputed that the amount due the C. & O. Ry. Co. under this contract is \$7,533.50 as of December 21, 1917, and the amount due the Director General of Railroads is \$5,765.43, as of April 1, 1918.

The Supreme Court of Appeals adverted to the use in the contract of the word "assign," apparently attributing to it the consequence of an *allocation* of the engine and crew for the service described. The force of the suggestion is not perceived. Every rental of personal property is an *assignment* for a *consideration*; nearly every formal contract for a lease contains the word "assigns;" it is the technically correct

expression denoting the transfer of personal property. The real question is whether the property here involved was assigned for a consideration or not; and that the property was assigned for a consideration in the present case is put beyond dispute by the contract itself.

Thus, the letter of the defendant is as follows:

"Newport News, Va.
September 28, 1917.

Chesapeake & Ohio Railroad Co.,
Newport News, Va.

Attention Mr. Ford, Supt. of Terminal, 1892-6.

Gentlemen:—

Referring to our conversation with you today, we believe the switching problem is getting so heavy on account of the work at various sites that it would be advisable for you to assign us an engine and crew *on your usual basis, billing us for cost of operation as you may elect.* (Italics added.)

We would appreciate it if you would arrange for this engine and crew at the earliest possible moment and also advise us if there is anything we can do towards helping out in furnishing a crew for this engine.

Yours very truly,

WESTINGHOUSE, CHURCH, KERR & COMPANY,

Alfred W. Bowie, Engineer in Charge."

To which Mr. Ford replied September 29th, thus:

"Gentlemen:—

Your letter of the 28th inst. under file 1892-6, with respect to providing an engine and crew to take care of your business at the various camp sites.

Beg to state that this engine will be assigned to your work, commencing Monday night and *you will be billed for the use of the engine and crew, together with the cost of supplies, repairs, etc., plus ten per cent.*" (Italics added.)

The words italicised above are conclusive of the question.

In *United States vs. Interstate Commerce Commission*, decided May 26th, 1924, Mr. Justice Sanford observed of a contract then under consideration:

"Stress is laid on the assertion that there is no specific language in the contract, except in one instance, to the effect that the cars are leased. It is not necessary that there should be. In pursuance of the contract the cars were delivered to, operated and controlled and their use as instrumentalities of transportation paid for by the railroads. This is enough to establish a letting for hire; and there is nothing in the contracts or in any of the details of their performance which requires a different conclusion."

POINT III.

The contract for the rental of the engine and crew did not constitute an undue preference or an illegal expedited service: on the contrary the failure to exact compensation would have that effect.

A contract for the rent, for a consideration, of the engine and crew, is in no wise illegal under the Interstate Commerce Act.

"Where there is a right to refuse to perform the services requested, there is a right to contract for their performance in a different capacity from that which rests upon a railroad company as a public or common carrier."

4 Elliott on Railroads, p. 11.

If the carrier "was under no statutory or common law obligation to render the special service it was called upon to render there were no reasons of public policy which forbade the rendition of such service upon such terms as the parties might stipulate"—Mr. Justice Lurton in *Clough vs. Grand Central R. Co.*, 155 Fed. 81.

See *Santa Fe P. R. Co. vs. Grant Bros. Cons. Co.*, 228 U. S. 177, 185.

Chicago, &c., R. Co. vs. Maucher, 248 U. S. 359.

Compare *Davis vs. Cornwell*, *infra*.

Clearly the carrier could not be required to give to a shipper the exclusive use of an engine and crew and that is the identical service which he was enabled to get under the contract.

Indeed, if the question of a preferential or expedited service is here involved, the failure to exact payment for the engine and crew will constitute a preference since *respondent is thereby given a preference over other shippers during the term of this contract of a service valued by the parties themselves at the sum of \$13,298.93.*

Recovery in this case was denied, because, says the court:

“The service performed by the railway employees with the railway equipment was the precise service which the company was then under immediate obligation to perform with reasonable promptness under the circumstances and for which it has already been paid. * * * There was no legal consideration for the promise relied on, and the trial court rightly determined that the railway company had no right to recover.”

If, under the law, the service performed was not a service which the company was under obligation to perform, then it is respectfully submitted that the conclusion reached by the court must be wrong.

In the case of *C. & A. R. Co. vs. Kirby*, 225 U. S. 155, it was held that notwithstanding it was the duty to carry and deliver the horses within a reasonable time, just as it was the duty of the railway company in the instant case to shift out and deliver cars to the respondent in a reasonable time, yet it was a violation of the Elkins Act, subject to a fine, for the railway company to agree for the line-haul to expedite the movement of horses. In the instant case, it would have been a viola-

tion of the Elkins Act for the carrier, in consideration of the line-haul charge, to assign a switch engine to the exclusive use of respondent, and thereby give a preference in the delivery of defendant's cars over the cars of other consignees.

In *Davis, &c., vs. Cornwell, supra*, this court held that the contract to supply cars for loading on a day named provides for a special advantage to a particular shipper. A *fortiori* does the assigning of an engine and crew to one consignee, giving that consignee control of the same through the consignee's foreman and employees, surely give that consignee a special advantage.

From the foregoing it is manifest that the carrier could not legally have done what the above quotation from the opinion says it was its obligation to do, namely, to devote an engine and crew to the special service of one consignee. The respondent did not ask for an engine and crew to be assigned to do its work in consideration of the aggregate line-haul charge, but asked that they be assigned to do the work of respondent under its direction, and that the carrier bill respondent for the cost of the operation, absolutely contradicting any idea that the cost was covered by the aggregate line-haul charge.

The representative of the carrier who made the contract doubtless knew that he could not legally devote this engine to the special service of this defendant, but he also doubtless knew that he could assign or rent—it makes no difference what word is used—the engine to the respondent upon the cost as indicated in his letter, and, therefore, in replying he said respondent would be "billed for the use of the engine and crew, together with the cost of supplies, repairs, etc., plus ten per cent," absolutely contradicting any idea that this business could be done under the aggregate line-haul charge,—that being an after-thought on the part of the respondent, after the work was done, in an effort to get rid of a just obligation. Had the carrier's representative under-

taken for the aggregate line-haul charge to devote this engine and crew to the work that they did, not only would the carrier be liable to a fine under the Elkins Act, but he himself for making such an agreement, would be liable to have been sent to the penitentiary, and the recovery in this case seems to be denied on the ground that the carrier was not doing that which it would have been punished for if it had done.

To recapitulate, we find the Court in the present case holding in effect that it was the duty of the carrier to furnish the special service of an engine and crew to spot the defendant's cars, under the line-haul rate, no tariffs having been filed for additional compensation therefor. *The precedent cases, however, hold the exact opposite to be true, viz.: that it is the duty of the carrier not to furnish the special service under such circumstances for the line-haul rate.*

In what is said above it is assumed that the Act of Congress of August 29th, 1916 (34 Stat. at L. 584), requiring carriers to "facilitate and expedite" the military traffic is not controlling. If that Act controls, as was urged upon the Supreme Court of Appeals, then, of course, no question of preferred or expedited service arises, since in that view it was the duty of the carrier to "expedite" the military traffic, though, obviously it was not required to put its equipment at the disposal of the Government without consideration.

Respectfully submitted,

David A. Peake.....

Walter L. Latta.....

Frank B. Brown.....

Meade J. Spicer Jr.
Counsel for Petitioners.

